

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Permit 16128 (Application 23541)
Arsenio Land Trust

ORDER REVOKING PERMIT

SOURCE: Unnamed Stream tributary to Bull Run Slough thence Pit River
COUNTY: Lassen

You are hereby notified that, pursuant to sections 1410-1410.2 of the California Water Code, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), is revoking Permit 16128 because the Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 16128 and has not made beneficial use of the water in accordance with the permit, the Water Code, and the State Water Board's regulations.

In addition, the Division is revoking Permit 16128 because the Permittee has failed to use beneficially all or part of the water for the purpose for which it was appropriated in accordance with the Water Code.

The revocation is based upon the following facts, information and conclusions:

The State Water Board issued Permit 16128 on December 30, 1970. The permit authorizes Doris L. Clark (Permittee) to divert water from an unnamed stream tributary to Bull Run Slough of 24 acre-feet (af) by storage to be collected from November 1 of each year to May 31 of the succeeding year. The permit requires that construction work be completed and that the water be applied to the authorized use by December 1, 1974.

A. PERMITTEE HAS FAILED TO COMMENCE, PROSECUTE WITH DUE DILIGENCE, AND COMPLETE THE WORK NECESSARY TO APPROPRIATE WATER UNDER THE PERMIT

1. The Division records show that Permittee began construction in 1970. (October 14, 1975 Petition for Extension of Time.)
2. The State Water Board approved five Petitions for Extension of Time that extended the time to complete construction to December 31, 1993 and the time to complete full beneficial use of water to December 31, 1995. The Permittee has received time extensions totaling 21 years to complete use of water pursuant to Permit 16128.
3. The Permittee filed a sixth Petition for Extension of Time on June 14, 2000, seeking an extension of the time to complete construction to October 31, 2001 and to extend the time to complete full beneficial use of water until December 31, 2006. The Division denied the petition, by Division Order dated February 16, 2005.

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J 9/10/08

4. Permittee failed to complete application of water to beneficial use by the December 31, 1995 deadline, and therefore has not made full beneficial use of the water as contemplated in the permit and in accordance with the Water Code and rules and regulations of the State Water Board. Permit 16128 authorizes collection to storage of 24 af per annum. The reservoir listed in Permit 16128 cannot store water because the dam breached near the reservoir outlet and has not been repaired. (October 14, 1975 Division Inspection Report; 1998 Progress Report of Permittee; April 26, 2000 Division Contact Report; May 17, 2000 Division Inspection Report; June 8, 2001 Division Contact Report.) The Division of Water Rights records contain no evidence that the dam has been repaired since the Division first noted that the dam was breached in 1975.
5. The Permittee periodically reports water diversion and use under Permit 16128 on the Progress Report by Permittee (e.g. 1993 Progress Report). Any water use must be accomplished by direct diversion, because the reservoir cannot store water. Permit 16128 does not authorize direct diversion. Accordingly, any direct diversion cannot be credited to Permit 16128 and must be accomplished under another basis of right.
6. The Division's records document that there has been no storage in the reservoir since 1975. Therefore, the Permittee has not had any stored water to release from the reservoir for beneficial use.
7. The current Permittee acquired the property in 1995. Division staff asked why the reservoir had not been repaired during the 2000 site inspection. The Permittee stated that he did not understand that there is a diligence requirement for developing a project pursuant to a permit. (May 17, 2000 Inspection Report.) Division staff explained the diligence requirement to the Permittee at that time.
8. On June 14, 2000, the Permittee submitted a Change Petition seeking to enlarge the place of use from 90 acres to net irrigation of 160 acres within a gross area of 360 acres.
9. On February 16, 2005, the Division issued an Order Denying Petition for Extension of Time and Canceling Petition for Change (Order). The time extension petition was denied on the basis of failure to meet the requirements of Title 23, California Code of Regulations, section 844, which requires the Permittee to show: (1) due diligence; (2) that failure to comply with previous time requirements was the result of obstacles that could not be reasonably avoided; and (3) that satisfactory progress would be made if the Division granted the extension. The Change Petition was canceled based on Water Code section 1701.4.

The Order found that the Permittee had not repaired the reservoir breach since 1975, despite the Division's previous approval of 21 years of time extensions to proceed with the project. Additionally, the Division's August 30, 2001 letter informed the Permittee of the need to conduct a cultural resources survey in order for the Division to evaluate the project's potential impacts. The Permittee did not see the need to conduct a cultural resource survey and refused to hire a qualified consultant to conduct the survey. The Permittee did not demonstrate diligence in pursuing the petitions. (August 30, 2001 Division letter, September 4, 2001 Contact Report, July 3, 2003 letter (resent July 28, 2003) August 5, 2003 letter, September 8, 2004.)

B. PERMITTEE HAS FAILED TO APPLY THE WATER AUTHORIZED BY PERMIT 16128 TO BENEFICIAL USE IN ACCORDANCE WITH THE WATER CODE FOR A PERIOD OF FIVE YEARS OR MORE

1. The permit remains in effect only as long as the water appropriated under the permit is put to beneficial use. A former owner constructed the dam in 1970, but the Division documented that the dam washed out in 1975 and has not been repaired. The Permittee has not documented that any water has been stored under this right and subsequently put to beneficial use.
2. Permittee failed to apply 24 af of water to beneficial use for a period of five years or more.

3. When a person fails to use beneficially all or any part of the water claimed by him or her for the purpose for which it was appropriated or adjudicated for a period of five years, such unused water may revert to the public. (Wat. Code, § 1241.)

C. BASED ON THE ABOVE FACTS AND INFORMATION, THE DIVISION CONCLUDES THAT CAUSE EXISTS FOR THE REVOCATION OF PERMIT 16128 PURSUANT TO WATER CODE SECTION 1410, SUBDIVISION (a) BECAUSE:

Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 16128 and has failed to apply to beneficial use all or part of the water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.

On March 11, 2008, the Division issued a Notice of Proposed Revocation to Permittee by certified mail. The notice provided that unless the Division received a written request for a hearing signed by or on behalf of the Permittee within 15 days after receipt by the Permittee of the notice, the State Water Board could act upon the proposed revocation of the permit without a hearing. Permittee did not submit a request for a hearing to the Division within the time period provided.

Based on the above facts and conclusions, the State Water Board, Division of Water Rights hereby revokes Permit 16128.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY: *SRH*

Victoria A. Whitney, Chief
Division of Water Rights

Dated: **SEP 12 2008**

LDailey:pdp:6/12/2008
U:/PERDRV/LDailey/23541 Arsenio/23541 Rev-Ord

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 23541

PERMIT 16128

LICENSE _____

ORDER APPROVING A NEW
DEVELOPMENT SCHEDULE AND
AMENDING THE PERMIT

WHEREAS:

1. Permit 16128 was issued to Doris L. Clark on December 30, 1970 pursuant to Application 23541.
2. Permit 16128 was subsequently assigned to Lawrence Mitchler and Marilyn Mitchler.
3. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board (Board).
4. The permittee has proceeded with diligence and good cause has been shown for said extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 8 of the permit be amended to read:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE

December 31, 1993

(0000008)

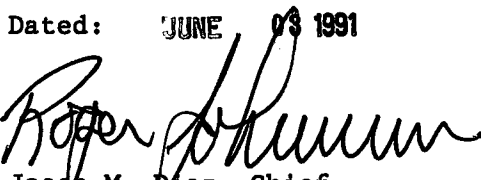
2. Condition 9 of the permit be amended to read:

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE

December 31, 1995

(0000009)

Dated: JUNE 03 1991

for 
Jesse M. Diaz, Chief
Division of Water Quality
and Water Rights

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 23541

PERMIT 16128

LICENSE _____

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE AND AMENDING THE PERMIT

WHEREAS:

1. A petition for extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.
2. The permittee has proceeded with diligence and good cause has been shown for extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Paragraph 8 of the permit is amended to read as follows:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE

December 1, 1989

2. Paragraph 9 of the permit is amended to read as follows:

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE

December 1, 1990

3. Paragraph 11 of this permit is deleted. A new paragraph 11 is added as follows:

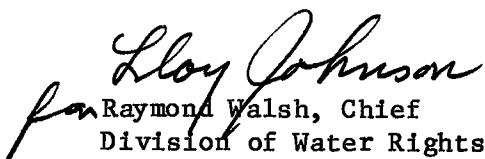
Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable

water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

Dated: **NOVEMBER 26 1986**


Raymond Walsh, Chief
Division of Water Rights

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 23541

PERMIT 16128

LICENSE _____

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE

WHEREAS:

1. A petition for extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.
2. The permittee has proceeded with diligence and good cause has been shown for extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Paragraph 8 of the permit is amended to read as follows:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE

December 1, 1984

2. Paragraph 9 of the permit is amended to read as follows:

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE

December 1, 1985

Dated: MAY 17 1983

L. D. Johnson
for Raymond Walsh, Chief
Division of Water Rights

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STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 23541

PERMIT 16128

LICENSE _____

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND AMENDING THE PERMIT

WHEREAS:

1. A petition for extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.
2. The permittee has proceeded with diligence and good cause has been shown for extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Paragraph 8 of the permit is amended to read as follows:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE

December 1, 1981

2. Paragraph 9 of the permit is amended to read as follows:

COMPLETE APPLICATION OF THE WATER
TO THE PROPOSED USE SHALL BE
MADE ON OR BEFORE

December 1, 1982

3. Paragraph 11 of the permit and Paragraph 2 of the order dated November 10, 1976 are deleted. A new Paragraph 11 is added to the permit as follows:

Pursuant to California Water Code Sections 100 and 275, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on

the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

Dated: AUGUST 1 1980

Walter G. Pettit
Walter G. Pettit, Chief
Division of Water Rights

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
2125 19TH STREET
SACRAMENTO, CALIFORNIA 95818



ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND
AMENDING PERMIT

PERMIT 16128

APPLICATION 23541

WHEREAS:

1. A PETITION FOR EXTENSION OF TIME WITHIN WHICH TO DEVELOP THE PROJECT AND APPLY THE WATER TO THE PROPOSED USE HAS BEEN FILED WITH THE STATE WATER RESOURCES CONTROL BOARD.

2. IT APPEARS THAT THE PERMITTEE HAS PROCEEDED WITH DILIGENCE AND THAT GOOD CAUSE HAS BEEN SHOWN FOR EXTENSION OF TIME.

3. THE STATE WATER RESOURCES CONTROL BOARD HAS DULY AUTHORIZED THE CHIEF, DIVISION OF WATER RIGHTS, TO SIGN THIS ORDER.

NOW, THEREFORE, IT IS ORDERED THAT:

1. A NEW DEVELOPMENT SCHEDULE IS APPROVED AS FOLLOWS:

CONSTRUCTION WORK SHALL BE COMPLETED ON OR BEFORE DECEMBER 1, 1979

APPLICATION OF THE WATER TO THE PROPOSED USE SHALL
BE COMPLETED ON OR BEFORE DECEMBER 1, 1979

2. PARAGRAPH 11 OF THE PERMIT BE AMENDED TO READ AS FOLLOWS: PURSUANT TO WATER CODE SECTION 100, ALL RIGHTS AND PRIVILEGES UNDER THIS PERMIT AND UNDER ANY LICENSE ISSUED PURSUANT THERETO, INCLUDING METHOD OF DIVERSION, METHOD OF USE, AND QUANTITY OF WATER DIVERTED, ARE SUBJECT TO THE CONTINUING AUTHORITY OF THE STATE WATER RESOURCES CONTROL BOARD IN ACCORDANCE WITH LAW AND IN THE INTEREST OF THE PUBLIC WELFARE TO PREVENT WASTE, UNREASONABLE USE, UNREASONABLE METHOD OF USE, OR UNREASONABLE METHOD OF DIVERSION OF SAID WATER.

THIS CONTINUING AUTHORITY OF THE BOARD MAY BE EXERCISED BY IMPOSING SPECIFIC REQUIREMENTS OVER AND ABOVE THOSE CONTAINED IN THIS PERMIT WITH A VIEW TO MINIMIZING WASTE OF WATER AND TO MEETING THE REASONABLE WATER REQUIREMENTS OF PERMITTEE WITHOUT UNREASONABLE DRAFT ON THE SOURCE. PERMITTEE MAY BE REQUIRED TO IMPLEMENT SUCH PROGRAMS AS (1) REUSING OR RECLAIMING THE WATER ALLOCATED; (2) RESTRICTING DIVERSIONS SO AS TO ELIMINATE AGRICULTURAL TAILWATER OR TO REDUCE RETURN FLOW; (3) SUPPRESSING EVAPORATION LOSSES FROM WATER SURFACES; (4) CONTROLLING PHREATOPHYTIC GROWTH; AND (5) INSTALLING, MAINTAINING, AND OPERATING EFFICIENT WATER MEASURING DEVICES TO ASSURE COMPLIANCE WITH THE QUANTITY LIMITATIONS OF THIS PERMIT AND TO DETERMINE ACCURATELY WATER USE AS

PERMIT 16128
PAGE 2

APPLICATION 23541

AGAINST REASONABLE WATER REQUIREMENTS FOR THE AUTHORIZED PROJECT. NO ACTION WILL BE TAKEN PURSUANT TO THIS PARAGRAPH UNLESS THE BOARD DETERMINES, AFTER NOTICE TO AFFECTED PARTIES AND OPPORTUNITY FOR HEARING, THAT SUCH SPECIFIC REQUIREMENTS ARE PHYSICALLY AND FINANCIALLY FEASIBLE AND ARE APPROPRIATE TO THE PARTICULAR SITUATION.

DATED: NOV 10 1976


R. L. ROSENBERGER, CHIEF
DIVISION OF WATER RIGHTS

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT No. 16128

Notice of Change (Over)

Application 23541 of Doris L. Clark

P. O. Box 102, Nubieber, California 96068

filed on June 29, 1970, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

Unnamed Stream

Bull Run Slough thence

Pit River

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Town- ship	Range	Base and Meridian
N 1,000 ft. and W 1,000 ft. from SE corner	¼ of ¼				
of Section 30, T38N, R7E, MDB&M	SE ¼ of SE ¼	30	38N	7E	MD
	¼ of ¼				
	¼ of ¼				
	¼ of ¼				
	¼ of ¼				

County of Lassen

3. Purpose of use:	4. Place of use:	Section	Town- ship	Range	Base and Meridian	Acres
Recreational, Wildlife Enhancement, Fish Culture, Irrigation and Stockwatering	SE ¼ of SE ¼	30	38N	7E	MD	10
Irrigation	NE ¼ of SE ¼	30	38N	7E	MD	40
Irrigation	NW ¼ of SW ¼	29	38N	7E	MD	40
	Total					90

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used, and shall not exceed 24 acre-feet per annum by storage to be collected from about November 1 of each year to about May 31 of the succeeding year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

6. The maximum quantity herein stated may be reduced in the license if investigation warrants.
7. Actual construction work shall begin on or before June 1, 1971 and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.
8. Said construction work shall be completed on or before December 1, 1973.
9. Complete application of the water to the proposed use shall be made on or before December 1, 1974.
10. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control Board until license is issued.
11. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water, ~~and to carry out legally established water quality objectives.~~
12. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.
13. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board, if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.
14. Rights under this application and permit are and shall be subject to existing rights determined by Pit River in Big Valley Decree No. 6395, Superior Court, Modoc County, and such other rights as may presently exist on the stream insofar as said existing and adjudicated rights are maintained.

(000 0023)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: DEC 30 1970

STATE WATER RESOURCES CONTROL BOARD

K. L. Woodward
Chief, Division of Water Rights